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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,126	12/03/2003	Patrick Rooney Conarro	HLW-0301	4753

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EXAMINER

HOLMES, JUSTIN K

ART UNIT	PAPER NUMBER
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3681

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,126

Applicant(s)

CONARRO ET AL.

Examiner

Justin K. Holmes

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-20 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/3/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings currently filed are informal. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

2. Claim 13 is objected to because of the following informalities: The language in the claim is unclear as to where the cross section has "a truncated elliptical cross section". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 19 recites the limitation "the side" in line 1. Specifically, it is unclear as to what element "the side" refers to since "a substantially planar side" is recited earlier in claim 16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 3, 5, 7, 8, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Haines et al.

Regarding Claims 1, 2, 8, 11, 12 and 14, the Haines et al. patent teaches a substantially rectangular flexible sleeve 12 having an opening on one side having a cross section the approximate form of a pedal (see Figs. 2 and 6). The Haines et al. patent discloses that the sleeve 21 can have textured internal and external surfaces, and with rounded protuberances formed thereby. (See column 2, lines 43-46). (The term “impression” as broadly recited in claims 1 and 11 is defined as the textured external surfaces as taught in the Haines et al. patent). Consequently, an impression can be provided a top surface or first surface of the substantially rectangular housing and/or second surface or bottom surface of the substantially rectangular housing. The Haines et al. patent teaches that the sleeve can be made of a PVC hose and is not limited to that particular polyvinyl chloride material. (The term broadly recited as “foamed plastic material” in claims 2, 11 and 12 is defined to include PVC hose.) See column 2, lines 36-38.

Regarding Claim 3, the Haines et al. patent teaches that the sleeve 21 has a plurality of rounded edges. See Figs. 3, 5 and 6.

Regarding Claim 5, the Haines et al. patent shows in Fig 6 that the opening has a pair of short walls and that the sleeve 21 can have a textured internal and external surfaces, and with rounded protuberances formed thereby. See column 2, lines 43-46). (The term broadly recited as "a bump" is defined as rounded protuberances.)

Regarding Claim 7, the Haines et al. patent shows an opening that is butterfly shaped. See Figs. 3 and 6.

8. Claims 1, 2, 3, 5, 8, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearl.

Regarding Claims 1, 2, 8, 11, 12 and 14, the Pearl patent teaches a substantially rectangular flexible sleeve 28 having an opening on one side having a cross section the approximate form of a pedal (see Figs. 1-5). The Pearl patent discloses that the sleeve 38 has external tread ribs 30 on a top surface/first surface and/or bottom surface/second surface of the exterior shape. See Figs. 1-5. (The term "impression" as broadly recited in claims 1 and 11 is defined as the external tread ribs 30). The Pearl patent teaches that the sleeve can be made of elastic rubber, plastic or other suitable preferably manually stretchable sleeve. (The term broadly recited as "foamed plastic material" in claims 2, 11 and 12 is defined to include plastic or other suitable stretchable material.) See column 1, lines 63-68.

Regarding Claim 3, the Pearl patent teaches that the sleeve 28 has a plurality of rounded edges. See Figs. 1-5.

Regarding Claim 5, the Pearl patent shows in Figs.1-5 that the opening has a pair of short walls and that the sleeve 28 has external tread ribs 30. (The term broadly recited as "a bump" is defined as an external tread rib 30.)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines et al. as applied to claims 1 and 11 above, and further in view of Evans.

Regarding claim 4, the Haines et al. patent lacks the teaching of a substantially rectangular housing having a side opposite the opening that forms a three dimensional curve.

The Evans patent teaches pedal cover having a side opposite the opening that forms a three dimensional curve as shown in Figs. 2-6.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Haines et al. patent to employ a side opposite the opening that forms a three dimensional curve as taught by the Evans patent to provide additional outside pedal protection for the user.

Art Unit: 3681

Regarding claim 13, as best understood by the Examiner, the Evans patent teaches that the exterior shape as a mirror image plane that has a truncated elliptical cross section.

11. Claims 9, 10 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Haines et al. as applied to claims 1 and 11 above, and further in view of Chuang.

The Haines et al. patent lacks a teaching wherein the impression is an inverted dome. The Haines et al. patent further lacks a teaching wherein the impression is a partial footprint.

The Chuang patent teaches a sole unit for a sandal having an impression of a partial footprint. (The term "inverted dome" as broadly recited in claims 9 and "reverse dome" as broadly recited in Claim 15 is defined as the portion of Fig. 1 that is highlighted). See Figs. 1-8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Haines et al. patent to employ the teaching of an impression as an inverted/reverse dome and/or a partial footprint as taught by the Chuang patent in order to provide a pedal that can be used barefoot.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pearl as applied to claim 1 above, and further in view of Evans.

The Pearl patent lacks the teaching of a substantially rectangular housing having a side opposite the opening that forms a three dimensional curve.

The Evans patent teaches pedal cover having a side opposite the opening that forms a three-dimensional curve as shown in Figs. 2-6.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Pearl patent to employ a side opposite the opening that forms a three dimensional curve as taught by the Evans patent to provide additional outside pedal protection for the user.

Regarding claim 13, as best understood by the Examiner, the Evans patent teaches that the exterior shape as a mirror image plane that has a truncated elliptical cross section.

13. Claims 9, 10 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Pearl as applied to claims 1 and 11 above, and further in view of Chuang.

The Pearl patent lacks a teaching wherein the impression is an inverted dome. The Pearl patent further lacks a teaching wherein the impression is a partial footprint.

The Chuang patent teaches a sole unit for a sandal having an impression of a partial footprint. (The term "inverted dome" as broadly recited in claims 9 and "reverse dome" as broadly recited in Claim 15 is defined as the portion of Fig. 1 that is highlighted). See Figs. 1-8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Pearl patent to employ the teaching of an impression as an inverted/reverse dome and/or a partial footprint as taught by the Chuang patent in order to provide for a pedal that can be used barefoot.

14. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haines et al. in view of Chuang.

Regarding claim 16, the Haines et al. patent teaches a flexible sleeve 12 for a pedal having an exterior shape with a substantially planar side and a substantially partially spherical side. See Figs. 2 and 6. (The term “substantially spherical side” as broadly recited in claim 16 is defined as the rounded portion of the sleeve 12 shown in Fig. 6.) The Haines et al. patent teaches an opening formed in the substantially planar side of the exterior shape as shown in Fig. 5. The Haines et al. patent lacks a teaching of a partial footprint formed in a side of the exterior shape.

The Chuang patent teaches a sole unit for a sandal having an impression of a partial footprint. See Figs. 1-8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Haines et al. patent to employ the teaching of a partial footprint formed in a side of the exterior shape as taught by the Chuang patent in order to provide for a pedal that can be used barefoot.

15. Regarding claim 17, the Haines et al. patent teaches an exterior shape having a mirror image plane as shown in Fig. 3.

16. Regarding claim 18, the Haines et al. patent teaches an opening having a pinched rectangular shape as shown in Figs. 3 and 6.

17. Regarding claim 19, the term “inverted dome” as broadly recited in claim 19 is defined as the portion of Fig. 1 in the Chuang patent that is highlighted.

18. Regarding claim 20, the Chuang patent teaches that the partial footprint is a right footprint in Fig. 1.

Allowable Subject Matter

19. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Facsimile Transmission

20. Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is (703) 305-3597. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on _____ (Date)

Art Unit: 3681

Typed or printed name of person signing this certificate:

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4873,890 to Nagano and U.S. Publication No. 2002/0100343 to Okajima et al. teach bicycle pedals having textured outer surfaces. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin K. Holmes whose telephone number is (571) 272-5930. The examiner can normally be reached on 8:30am to 5:00pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (571) 272-7095. The fax phone

Art Unit: 3681

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Justin K Holmes
Examiner
Art Unit 3681

JKH:5/02//05



ROGER PANG
PRIMARY EXAMINER

5-9-05